

**STATE LANDS COMMISSION
REGULATIONS GOVERNING FEE SCHEDULE FOR "MARINE INVASIVE SPECIES
CONTROL FUND"**

INITIAL STATEMENT OF REASONS

The following is the Initial Statement of Reasons for the modifications to Sections 2270 and 2271 of Article 4.5.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of the amended regulation is to establish a key element, the amount of the Fee, needed to implement funding for the programs to curtail the release of ballast water containing nonindigenous species. Division 36 of the Public Resources Code (P.R.C.) mandates both programs and the funding mechanism. Only the specific amount of the Fee is not. The purpose for resetting the Fee at this time is to ensure that the State collects the funds required for the programs established under this Law.

NECESSITY

The proposed amendment to the regulation is necessary because, while the provisions of Section 71215 of the P.R.C. require the State Lands Commission (the Commission) to collect the fee in question, if the amount of that fee is not increased, the State will not collect enough funds required to implement the mandates of the law. In 1999, the Governor and the Legislature recognized the urgent need to curtail introductions of nonindigenous species from ships' ballast water and sediment discharges into State waters. They therefore established a new division in the P.R.C. comprised of Sections 71200 through 71217 and entitled, "Division 36. Ballast Water Management for Control of Nonindigenous Species". Among these provisions is P.R.C. Section 71215(b)(1), which requires the Commission to establish a reasonable and appropriate fee (the Fee) to carry out this Law. In 2003, the Governor and the Legislature reauthorized, expanded and renamed the law (Division 36. Marine Invasive Species Act, Chapter 491, Statutes of 2003). As a result, programs and budgets have been expanded. If the proposed amendment is not adopted, then the State will not collect the funds needed for those required programs. Increasing the Fee to \$500 will ensure the necessary funds are available without resulting in an unreasonable surplus.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

None

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

To help prevent further introductions of nonindigenous species through ballast water releases, Chapters 491, Statutes of 2003 reauthorized and expanded, Division 36 of the P.R.C., the mandatory, multi-agency ballast water management and control program. Responsible agencies include the Commission, Department of Fish and Game (DFG), State Water Resources Control Board (SWRCB), and the Board of Equalization (BOE). Each agency is required to work in cooperation with the others in developing reports and conducting research into the extent of current invasions and potential long-term solutions to the problem of nonindigenous species introductions.

The programs required under this Law are numerous. Central is the requirement that ships traveling into the State exchange their ballast water prior to entering State waters and the Commission is charged with implementing an extensive monitoring program to ensure these exchanges are performed. The enforcement program has also been expanded and includes the imposition of criminal as well as administrative penalties. The Commission is also required to develop regulations addressing ballast water management for coastwise traffic (due January 1, 2005) and develop regulations that govern the evaluation of alternative ballast water treatment systems (due July 1, 2005). Additionally, the Commission is required to develop several reports for the Legislature, including a report recommending performance standards for ballast water discharges (due January 31, 2006); biennial reports on alternative treatment technology research (beginning January 31, 2005); a report on other ship-mediated vectors for NAS introductions (due March 1, 2006); and biennial reports beginning January 31, 2005, that synthesizes and analyzes monitoring and inspection information to evaluate the effectiveness of the ballast water management program.

The DFG, in consultation with the Commission and the U.S. Coast Guard, is continuing research to determine the location and extent of nonindigenous aquatic species populations already present in coastal and estuarine waters of the State. This study shall be made available to the public by January 1, 2007 and a report is due to the Legislature by January 1, 2009.

The SWRCB, is required to assist the Commission in developing performance standards for the discharge of ballast water into the waters of the state; sponsor a pilot program to evaluate alternatives for treating and otherwise managing ballast water; and, prepare an analysis of vectors, other than ballast water, and relative risks of those vectors, for release of NAS from vessels.

Finally, the BOE is required by this law to collect the required fees for the Fund, and the cost of collection must also be covered by the Fund.

The Fee was established initially at \$600 per voyage by emergency regulation that became effective on January 1, 2000. The Fee was reduced to \$400 per voyage, effective April 30, 2000 by emergency regulation. Those emergency regulations were replaced on August 29, 2000 with permanent regulations (2 CCR 2271) setting the fee at \$400 per voyage. The Fee was again reduced to \$200 per voyage, effective July 1, 2002 by emergency regulation. Those emergency regulations were replaced on November 14, 2002 with permanent regulations (2 CCR 2271) setting the fee at \$200 per voyage.

The Commission determined that it is necessary to reset the Fee at \$500 for each voyage. This conclusion was reached after the Commission considered all alternatives permitted under the law, from no fee at all up to the maximum level of \$1000 per qualifying voyage. A variety of tiered Fees were also considered, including a cap on the number of voyages any individual shipping company would be charged, a lower Fee specifically for the Hawaiian trade and a lower Fee for operators that make certain commitments. Taking into account past results from collection efforts, a flat Fee set at \$500 per qualifying voyage is expected to produce revenues sufficient to cover in a timely manner costs for all elements of the programs mandated under this Law without producing a significant surplus.

The Commission's analysis is based upon a number of assumptions, the primary one being that the financial needs for the program will be in accordance with the Budget Change Proposals that have been submitted to date. These call for expenditures of \$868,000 in Fiscal Year (FY) 2003/2004, \$3,479,000 in FY 2004/2005 through FY 2008/2009 and, \$1,991,000 in FY 2009/2010, at the end of which the program will expire. The other two assumptions were that the State would see about 7000 voyages each year against which the Fee could be levied and that the State would likely see a compliance rate of approximately 95%. These figures were based upon the experience of the shipping community and the Board of Equalization. Calculations were therefore based upon qualifying voyages per year. With these assumptions, the BOE, the Commission and the Technical Advisory Group (TAG), consisting of representatives from the maritime industry, state agencies, and environmental organization, concluded that the Fee could be set at \$500 per voyage.

The amount of the fee under this Law may be modified in the future. If the Commission finds that collection rates are higher or lower than anticipated, the Commission will have to consider again the appropriate amount of the fee. If that action is necessary, the modification will be made as an amendment to these regulations.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The Commission finds that the adoption of this amended regulation will not have a significant adverse economic impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

All affected businesses are commercial maritime transportation vessel owners and operators, having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342.610(c)(7). This change will actually reduce the cost to businesses conducting operations in California.

Article 4.5. Ballast Water Management for Control of Nonindigenous Species Marine Invasive Species Control Act

AB 433 changed the title of the legislation. The new title is the "Marine Invasive Species Control Act." The above change in the title of Article 4.5 has been made to reflect the change made by the new statute. Accordingly, the existing title has been struck out.

Section 2270. ~~Ballast water Management and Control~~ Marine Invasive Species Control Act; Definitions

AB 433 changed the title of the legislation. The new title is the "Marine Invasive Species Control Act." The title of §2270 has been modified by striking out the old title and replacing it with the new one.

For purposes of this Article, the following definitions apply.

- (a) "Voyage" means any transit by a vessel destined for any California port from a port or place outside the EEZ, ~~including intermediate stops at a port or place within the EEZ. For the purposes of this section, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage~~ of the coastal waters of the state.
- (b) ~~"EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 miles~~ "Waters of the state" means any surface waters, including saline waters that are within the boundaries of the state.

The new statute has amended the definitions of the terms "Voyage" and "Waters of the state." The new definitions have been incorporated into §2270 by striking out the old text and adding the new language of the statutory definition.

Authority cited: Public Resources Code Section 71215(b)

Reference cited: Public Resources Code Sections 71200(m) and (o) and 71215

The amended Section 71200 of the Public Resources Code has more subsections in its construction. In citing the references for this section, subsections (m) and (o) need to be added.

Section 2271. Fee Schedule for ~~Exotic Species Control Fund~~ Marine Invasive Species Control Fund

The title of §2271 has been modified to reflect the terminology in the amended statute. The old title has been struck out and the new one added.

- (a) The fee required under Public Resources Code Section 71215 is ~~two~~ five hundred dollars (~~\$200~~500) per vessel voyage.

This provision sets the fee payable to fund the Marine Invasive Species Control Fund at five hundred dollars (\$500) per vessel voyage. This is less than the maximum amount authorized by P.R.C. Section 71215(b)(1). The rationale for the fee increase is explained on pages 2 and 3 of this document.

- (b) The Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of the fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

Subsection (b), of §2271 has been added here for the benefit of those who are required to pay the fee. This provision is cited verbatim from the statute. Its inclusion here is for informational purposes for those who are subject to the fee. The inclusion here would facilitate persons subject to the fee contemplating a rise or a reduction in the fee.

- (c) The fee shall be collected from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

The language of subsection (c) has been added to §2271, to improve clarity by being specific as to which voyages qualify for the payment of the fee. The second provision in this subsection further clarifies that the fee should be collected for the first port of call in California only. Subsequent calls at other California ports during the same voyage transit do not qualify for payment of the fee.

- (b~~d~~) (1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the fee required under Public Resources Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the fee, taking into account the provisions of Public Resources Code Sections 71200 through 71216.

Subsection (b) has been renumbered (d) as a result of the addition of two new subsections (b) and (c).

- (2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

Authority cited: Public Resources Code Section 71215(b)

Reference cited: Public Resources Code Sections 71200 and 71215